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9 **NATIONAL LABOR RELATIONS BOARD**

10 **REGION 21**

11
12 UNITED FOOD & COMMERCIAL
WORKERS UNION, LOCAL 135 (Ralphs
13 Grocery Company)

14 and

15 BRANDON DION, an Individual
16

CASE NO. 21-CB-112391

**CLOSING BRIEF OF RESPONDENT
UNITED FOOD AND COMMERCIAL
WORKERS UNION, LOCAL 135**

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INTRODUCTION

In this case, the General Counsel and Charging Party Brandon Dion (“Charging Party” or “Dion”) challenge Respondent UFCW Local 135’s (“the Union” or “Local 135”) reasonable administrative practice of instructing newly-hired bargaining unit employees to affiliate in person at the Union’s office. The practice benefits both the Union and the employee by facilitating the exchange of up-to-date information between the Union and the employee, and by allowing for a personal dialogue on important matters related to the Union’s representation of the employee. The Union’s administrative practice is neither arbitrary, discriminatory, nor in bad faith, and therefore well within the wide range of reasonableness granted unions under the duty of fair representation.

Nevertheless, the General Counsel and Charging Party contend the practice is threatening and coercive, in violation of Section 8(b)(1)(A). That is simply not the case. The Union’s welcome letter, which instructs each new hire to affiliate in person at a Union office, contains no explicit or implicit threats of employment-related consequences for failure to do so. There was no evidence that Charging Party or any other represented employee believed they would suffer adverse employment consequences for failing to affiliate in person. Rather, it was undisputed that the Union has never attempted to enforce the union security clause against Dion or anyone else for failing to affiliate in person. In short, there was absolutely no evidence that the Union’s in-person affiliation practice was threatening or coercive, and this portion of the Complaint must be dismissed.

The General Counsel and Charging Party further allege that the Union breached its duty of fair representation by failing to provide Dion a breakdown of its chargeable and non-chargeable expenses. However, they presented no evidence that the Union was ever obligated to provide this information to Dion. A union need not provide a nonmember detailed financial information about its expenses unless and until that nonmember objects to paying for the union’s non-representational activities. To this day, Dion has never advised Local 135 that he objects to paying for its non-representational activities. Thus, the Union was not obligated to provide Dion the financial information, and this portion of the Complaint must also be dismissed.

1 **FACTS**

2 **A. Dion's Employment In A Bargaining Unit Represented by Local 135**

3 On or about June 29, 2013, Dion commenced employment with Ralphs Grocery
4 Company ("Ralphs" or "the Employer") as a courtesy clerk in its Oceanside, California store.
5 (JX¹ 1, ¶ 2; Tr. 23) The Union and Ralphs are parties to a collective bargaining agreement
6 ("CBA") that governs the terms and conditions of Dion's employment with Ralphs. The CBA
7 contains a union security clause. (JX 1, ¶ 3)

8 **B. The Union's Welcome Letter**

9 On July 12, 2013, the Union sent Dion a letter and attachments, totaling five pages.
10 (JX 1, ¶ 5 & Exh. 2) The first page was a "welcome letter" which congratulated him on his
11 employment, notified him of the union security clause of the CBA and provided the dues rate for
12 his job classification. The letter provided: "All new hires are required to come to one of our
13 offices to affiliate **in person** with Local 135." (JX 1, Exh. 2 at 1) The letter provided Dion a
14 deadline of August 9, 2013 to affiliate with the Union. One of the enclosures to the welcome
15 letter was a document which notified Dion of his "right to refrain from being a member of the
16 Union" and to "pay a reduced fee that reflects the cost of representation." (JX 1, Exh. 2, at 4)

17 The Union's Secretary-Treasurer, Rosalyn Hackworth, explained that the Union uses the
18 word "affiliate" to describe the procedure whereby a new hire establishes contact with the Union
19 either as a full Union member, a non-member, a Beck objector, or a religious objector. (Tr. 69-
20 70)

21 **C. Dues Delinquency Letter**

22 The Union neither heard from Dion nor received a dues payment from him by the August
23 9, 2014 deadline. Therefore, on August 16, 2013, the Union sent Dion a standard dues
24 delinquency letter, in which it provided him until September 13, 2013 to fulfill his financial
25 obligations to the Union. (JX 1, Exh. 3) The letter further provided: "We understand that this
26 may be your first experience with a labor union and we would love the opportunity to explain the

27 _____
28 ¹ The abbreviations used herein for Joint Exhibits, Respondents Exhibits, and General
Counsel's Exhibits are "JX," "RX," and "GCX," respectively.

1 benefits of being a Union member. We look forward to seeing you at one of our offices to begin
2 your membership.” (Id.)

3 **D. Charging Party’s Letter to the Union**

4 On August 20, 2013, the Union received a letter which purported to be from Charging
5 Party.² (Tr. 85-86; JX 1, ¶ 9). In the letter, Dion stated his intent to “refrain from being a
6 member of the Union,” but expressed an interest in joining the Union at a later date. In
7 particular, he stated: “I would like to be able to join the union once I am closer to high school
8 graduation.” In explaining his decision to decline Union membership at present, Dion explained:
9 “I may want to join the union later, but right now I am only 16 and working part-time while I go
10 to high school. Because I won’t be working a lot of hours and I’m still in high school I’m not
11 ready to be a union member.” (JX 1, Exh. 4)

12 On the subject of fees, Dion wrote: “Please let me know about the reduced fee for non-
13 members. From what I understand this is an agency fee for the costs of collective bargaining,
14 contract administration, and grievance adjustment.” (Id.)

15 **E. The Union Reduces Charging Party’s Dues**

16 On August 22, 2013, the Union mailed Dion a letter confirming receipt of his request for
17 reduced dues. (JX 1, ¶ 11 & Exh. 5) The letter notified Dion of his new dues rate and further
18 provided: “You will need to come in and sign up as a Beck member and relinquish your rights
19 as a union member.” (JX 1, Exh. 5)

20 //

21
22 ² Over the Union’s hearsay objection, Charging Party’s mother was permitted to testify
23 that on August 19, 2013 she called the post office to see why Dion’s letter was not delivered
24 sooner, and was told by someone at the post office that the post office had attempted to deliver
25 the letter, nobody was at the Union’s front desk at the time, the post office left a notice, and the
26 Union failed to pick up the letter. (Tr. 35) The Union strenuously objects to this testimony
27 being considered for the truth of the matters stated – i.e., as evidence of what the post office or
28 the Union did with respect to Dion’s letter prior to its delivery to the Union on August 20, 2013.

Moreover, Board law is clear that a union cannot breach its duty of fair representation
based on a letter it is not aware of and has never received, particularly where, as here, the
Charging Party had more efficient and reliable means of communicating with the Union (in-
person delivery, for instance) that he chose not to utilize for ideological reasons. United States
Postal Service, 333 NLRB 343, 351-52 (2001) (Union did not breach duty of fair representation
based on letter from nonmember that it never received, particularly where nonmember had more
reliable methods of contacting Union which he chose not to utilize).

1 Dion has never come to the Union's office. The Union reduced his dues based solely on
2 his letter. (Tr. 75-76, 97)

3 **F. Dion's Mother's Telephone Calls to the Union**

4 **1. Alleged Call in July 2013**

5 After Dion received the Union's first letter in July 2013, his mother claims to have called
6 the Union three times (Tr. 31). She asserts the first call was in July 2013, about 7-10 days after
7 Dion received the Union's first letter. (Tr. 31-32) The Union only has records of two calls from
8 Dion's mother, both in August 2013. (RX 1; Tr. 82) The Union maintains detailed,
9 contemporaneous records of all of its contacts with, or on behalf of, represented employees
10 regarding membership- and dues-related issues; however, it cannot make these notations in
11 members' computerized files when callers fail to identify themselves or the bargaining unit
12 members on whose behalf they are calling. (Tr. 81-82)

13 Dion's mother claimed she couldn't recall whether she mentioned her son by name when
14 she called the Union the first time. (Tr. 41) She also could not recall which Union office she
15 called, whether her call was answered by a live person or a recording, or which department she
16 selected to be transferred to when she called. (Tr. 40) During this call, she allegedly spoke to a
17 man – who she could not identify by name or title – for 10-15 minutes. (Tr. 32, 40-41) When
18 she asked what Dion's reduced fees would be if he declined membership, the man allegedly told
19 her he didn't have that information available, that it would have to be calculated, and that Dion
20 would have to come into the office for that information. (Tr. 32)

21 **2. August 19, 2013 Call**

22 On August 19, 2013, after Dion received the Union's August 16, 2013 dues delinquency
23 letter, his mother called the Union and spoke to a membership clerk, Vicki Miller. (Tr. 82-83)
24 Immediately after speaking with Dion's mother, Miller documented the substance of the call, in
25 accordance with the Union's regular business practice of documenting all such calls with "no lag
26 time."³ (Tr. 81-82, 83) Miller's description of the call was: "Members mother called to say that

27 _____
28 ³ Miller's description of the phone call is admissible for the truth of the matters stated
under Federal Rule of Evidence 803(6).

1 he had sent a certified letter to say that he didn't want to join the union and requested lower fees.
2 Was told he would have to come into the office in person." (RX 1 at 2)

3 Lindsey Bensinger, the head of the Union's membership department and Miller's
4 supervisor (Tr. 80), also remembers this call. Bensinger testified that Miller put Dion's mother
5 on hold and asked her (Bensinger) whether the Union had received a certified letter from Dion.
6 Bensinger responded that the Union had not received a letter from Dion. (Tr. 82-83)

7 Dion's mother described the call in a similar manner. She testified she spoke to a woman
8 who looked up Dion on the computer, advised that the Union had not received his letter, and
9 stated that Dion would have to come to the Union's office. (Tr. 33-34, 41-42)

10 **3. August 20, 2013 Call**

11 **i. Conversation with Lindsey Bensinger**

12 Shortly after the Union received Dion's letter on August 20, 2013, his mother called
13 again. Miller initially fielded the call, then transferred it to Bensinger. Bensinger described the
14 conversation as follows. Dion's mom asked if the Union had received Dion's letter. Bensinger
15 confirmed the Union had. Dion's mom stated she wanted Dion to pay reduced fees. Bensinger
16 advised Dion's mom that Dion could give up his rights as a union member and affiliate as a non-
17 member, but he would need to come to the Union's office to affiliate in person and fill out
18 paperwork, as was the Union's standard procedure. Bensinger then transferred the call to
19 Secretary-Treasurer Hackworth. (Tr. 83-84) Bensinger denied suggesting to Dion's mom that
20 full Union membership was required, or that Dion would be fired or removed from the schedule
21 if he failed to affiliate in person. (Tr. 84, 90-91)

22 Immediately after transferring the call, Bensinger documented the substance of her
23 conversation with Dion's mother, in accordance with the Union's regular business practice.
24 (Tr. 84-85) Bensinger's written description of the call is consistent with (albeit slightly more
25 detailed than) her testimony at the hearing. Bensinger wrote:

26 Mbrs mom Jennifer mailed in letter requesting her son to refrain from joining the
27 union. I advsd her he could give up his rights as a union mbr but still be required
28 to come in and affiliate non mbr status, she wants him to pay reduced fees when
he decides to come in. She also requested us to mail her all the info regarding this
request. I advsd her we needed to speak to the mbr if this was his decision. She
advsd me no, he was in school and only 16. She also said she has a lawyer

1 willing to represent them. I advsd her he would still need to come in. Scanned
2 letter and gave to MK. Transferred Jennifer to RH.

3 (RX 1, at 1)

4 Dion's mother claimed that Bensinger said during this phone conversation that Dion was
5 required to join the Union (Tr. 36), an allegation that Bensinger denied. (Tr. 84) Dion's mother
6 then gave varying responses when asked if anyone from the Union mentioned Dion's right to
7 affiliate as a nonmember. First, she claimed she could not recall (Tr. 43-44); then she claimed
8 that she did not understand the question. (Tr. 44-45) With regard to the word "affiliate," she
9 volunteered that she did not understand "all the legal ramifications of that with regard to the
10 Union." (Tr. 43) Similarly, she couldn't recall if anyone from the Union mentioned "Beck"
11 status during the phone call, but explained that even if they had, she would not have understood
12 what it meant. (Tr. 46)

13 **ii. Conversation with Rosalyn Hackworth**

14 After speaking with Bensinger, Dion's mother spoke with Secretary-Treasurer
15 Hackworth. According to Hackworth, Dion's mother said that she worked in Orange County and
16 it was a long way for her to come to the Union's office. Hackworth explained that the Union
17 prefers for new hires to come to its office to fill out paperwork and obtain information regarding
18 medical insurance. Dion's mother responded that Dion does not need medical insurance. She
19 also said she did not want Dion to come to the Union office because she was afraid the Union
20 would pressure him to become a full member. (Tr. 55-56) Hackworth explained that the Union
21 would not pressure him, it was not their style, they were "not like a used car salesperson," and
22 that there was no reason for the Union to do so since he had already made known his intent not to
23 join the Union. (Tr. 55-56, 56-57) Dion's mother then said she was contacting National Right to
24 Work; Hackworth responded that that was her choice and ended the phone call by telling her to
25 have a nice day. (Tr. 56)

26 While speaking to Dion's mother, Hackworth made notes of the conversation on a piece
27 of paper near her phone. (Tr. 56) Three days later, on August 23, 2013, she transferred those
28 notes to Dion's file in the Union's computer system. (Tr. 56) Later, on September 3, 2013,

//

1 Hackworth revised the note she had written in Dion's file to insert the date of her conversation
2 with Dion's mother. (Tr. 71-73) Hackworth memorialized the conversation as follows:

3 Spoke to mom on 8/20 explained proc for joining – come in for paperwork. Mom
4 mentioned pressure to become full mbr. Told her no pressure that is not what we
5 do (i.e. he had already written a letter explaining his intent), just need to come in
6 to complete paperwork (our standard procedure. I also explained that our office
also explains med benefits (mom said he doesn't need them). Mom complained
about drive, that she worked in Orange County and...threatened to hire right to
work attorney. I politely ended phone call.

7 (RX 1, at 1)

8 Dion's mother confirmed that Hackworth explained the Union's rationale for instructing
9 new hires to affiliate in person – filling out paperwork and obtaining information about medical
10 insurance – and that the call ended with Dion's mother threatening to involve the National Right
11 to Work Foundation. (Tr. 38) However, she denied that Hackworth reassured her that the Union
12 would not pressure Dion to become a full member. (Tr. 44) She further alleged that Hackworth
13 said Dion was going to get health insurance even though he didn't need it. (Tr. 37)

14 Following these telephone conversations, the Union had no further contact with Dion's
15 mother. (Tr. 56, 84) Dion himself has never spoken to anyone affiliated with the Union. (Tr.
16 28)

17 **G. Union's In-Person Affiliation Practice**

18 The Union's practice of instructing all new hires to affiliate with the Union in person
19 predates Hackworth's employment with the Union. (Tr. 58-59) Hackworth has been Secretary-
20 Treasurer for eleven years, and held other jobs at the Union before that. (Tr. 54-55)

21 In-person affiliation is an important administrative practice for the Union because it
22 deters forgeries and impersonation. The Union has had problems in the past with people
23 impersonating Union members either in writing or on the telephone. For instance, during a labor
24 dispute ten years ago, the Union received multiple documents by mail and fax which purported
25 to be letters from Union members resigning their membership. The Union later learned these
26 letters were forgeries and that the members in question had never wanted to resign from the
27 Union. (Tr. 59-61, 75)

28 //

1 In addition, the Union's in-person affiliation practice is expedient and convenient for
2 both the Union and the represented employees. During this meeting, the employee sits one-on-
3 one with a Union membership clerk, who provides the employee a copy of the contract,
4 information about the employee's job security under the contract, information about health
5 insurance and other Union benefits, such as tuition assistance, scholarship programs, and
6 discount tickets, and an explanation of the dues and fees associated with the employee's job
7 classification. The represented employee has an opportunity to ask questions about these and
8 other topics, bring his dues current, and become familiar with the union that will be representing
9 him with respect to his employment. (Tr. 86-87)

10 The Union also verifies the individual's contact information, job classification and store
11 information, which is sometimes different from the information the Union initially received from
12 the Employer. (Tr. 98-99) In addition, the Union provides the employee up-to-date contact
13 information for his assigned Union representative, as Union representatives' assignments change
14 periodically. (Tr. 63, 77-78)

15 The Union advises all new hires to affiliate in person, regardless of whether they desire to
16 become full members of the Union. The affiliation procedure is the same for those who choose
17 full membership and those who do not. (Tr. 62-63, 90) Nobody is told that full Union
18 membership is required. (Tr. 87) If a new hire says she does not want to join the Union, the
19 Union does not pressure that person to join or discourage that choice (Tr. 55, 93). It has a
20 supervisor such as Bensinger or Hackworth speak to the individual about the benefits of Union
21 membership and the rights the employee will forgo by declining Union membership. (Tr. 87, 96-
22 97) The Union accepts requests for non-member status as long as they are in writing, regardless
23 of whether the employee affiliates in person. (Tr. 87-88, 94, 97)

24 Notwithstanding the Union's preference that all represented employees affiliate in
25 person, not all employees do so. The Union represents approximately 47 employees in Imperial
26 County, who it has instructed to affiliate by mail because their work sites are too far from the
27 Union's office. (Tr. 61-62, 88-89; GCX 2) The Union has also mailed affiliation documentation
28 //

1 to an employee who was unable to affiliate in person because the employee was in the hospital.
2 (Tr. 62) On another occasion, a homeless employee was not asked to affiliate in person. (Tr. 88)
3 There is no consequence to represented employees who fail to affiliate with the Union in
4 person. (Tr. 61-62) The Union has never sought to enforce the union security clause against any
5 person for failing to affiliate in person. (Tr. 62) Indeed, Charging Party has never affiliated
6 with the Union in person and the Union has not taken any action against him. (Tr. 75-76, 97)

7 ARGUMENT

8 **A. The Union's Practice of Instructing New Hires to Affiliate in Person Does Not** 9 **Violate Its Duty of Fair Representation**

10 Local 135's in-person affiliation practice facilitates its representation of bargaining-unit
11 employees and its enforcement of its contractual union security clause. As an administrative
12 practice related to the Union's statutory duties of representation and contract administration, the
13 in-person affiliation practice is properly evaluated under the duty of fair representation standard.

14 The Supreme Court has issued an "explicit directive that the duty of fair representation
15 applies to all union activity." California Saw and Knife Works, 320 NLRB 224, 230 (1995).
16 The Board therefore applies the duty of fair representation standard when evaluating the
17 reasonableness of union procedures for administering union security clauses. L-3
18 Communications, 355 NLRB No. 174 at 2 (2010). The Board has emphasized the importance of
19 maintaining the "careful balance...between the constitutionally and statutorily protected interests
20 of nonunion employees and the interests of unions in being able to perform their statutory duties
21 without unreasonable administrative burdens." California Saw, 320 NLRB at 230.

22 The Board recognizes that unions, in formulating practices for the administration of
23 union-security clauses, must balance the rights of individual employees against "the interests of
24 the collective bargaining unit as a whole in having the union secure the resources necessary to
25 vigorously perform its statutory duties without unreasonable administrative burdens or costs."
26 L-3 Communications, 355 NLRB No. 174 at 2. "This is precisely the type of discretionary trade-
27 off subject to the duty of fair representation." Id. at 2-3. Under the duty of fair representation,
28 "a union's actions are considered arbitrary... 'only if, in light of the factual and legal landscape

1 at the time of the union's actions, the union's behavior is so far outside a 'wide range of
2 reasonableness' as to be irrational." Id. at 3.

3 **1. The In-Person Affiliation Practice Serves Legitimate Union Interests and**
4 **Does Not Unreasonably Burden the Exercise of Section 7 Rights**

5 With these principles in mind, the Board has applied the following standard for
6 evaluating administrative procedures similar to Local 135's in-person affiliation policy: "we...
7 consider the balance between the competing interests: the legitimacy of the union's asserted
8 justifications for its procedures and the extent to which they burden" employees' exercise of
9 Section 7 rights. Id.; accord Cequent Towing Products, 357 NLRB No. 48 at 2 (2011); Colt's
10 Mfg Co., 356 NLRB No. 164 (2011) (vacated as moot, 487 Fed. App. 661 (2d Cir. 2012)).

11 Here, the Union has advanced legitimate justifications for its practice. Most
12 significantly, the Union has struggled with fraudulent communications from people
13 impersonating bargaining-unit members on the phone and through forged documents sent to the
14 Union. Secretary-Treasurer Hackworth explained how during a labor dispute, the Union
15 received multiple letters by fax and mail purporting to be from Union members seeking to resign
16 their Union membership, but these resignation letters turned out to be forgeries. (Tr. 59-60)

17 Plainly, the Union has a legitimate interest in ensuring that communications from
18 represented employees on the fundamental issue of Union membership are genuine and not
19 forged or fraudulent. California Saw, 320 NLRB at 249 (recognizing union's legitimate interest
20 in "procedures for the orderly administration of its dues-objection program"). Instructing new
21 hires to affiliate in person – even if they ultimately decide not to join the union – significantly
22 reduces the likelihood of impersonations and forgeries.

23 Second, the Union has a legitimate interest in educating its members about their contract,
24 their monthly dues, the services available to them as represented employees, and the benefits of
25 Union membership. L-3, 320 NLRB No. 174 at 4 (union has legitimate interest in providing
26 statutorily-required information to represented employees); California Saw, 320 NLRB at 233
27 n.51 (recognizing the right of unions to "attempt[] to persuade employees to become full
28 members of the union through noncoercive means"). By instructing new hires to affiliate with

1 the Union in person, the Union provides an opportunity for “one-stop shopping” that is efficient
2 for both the Union and the employee. The Union benefits because it can: (1) confirm employee
3 contact information, store information, and job classification information, since the information
4 the Union receives from the employer is sometimes obsolete or inaccurate (Tr. 98-99); (2)
5 provide the employee a face-to-face explanation of her rights under the CBA, health insurance,
6 and benefits of Union membership; (3) provide the employee a face-to-face explanation of the
7 monthly dues for her classification; (4) provide the employee contact information for her
8 assigned Union representative and (5) establish a rapport with the person it is obligated to
9 represent. (Tr. 86-87)

10 The employee, in turn, benefits because, in one short meeting, she can (1) verify the
11 accuracy of her contact information with the Union; (2) sign up for dues deduction, if desired;
12 (3) apply for health insurance, if desired; (4) register to vote, if desired; (5) receive up-to-date
13 contact information for her assigned Union representative, (6) obtain contemporaneous responses
14 to any questions she may have about contract rights, health insurance, dues or other topics; and
15 (7) learn where and to whom she should go with problems relating to her employment or the
16 CBA.

17 Absent the in-person affiliation practice, the exchange of the foregoing information
18 would have to be accomplished piecemeal, through the mail and/or by telephone, which would
19 be less efficient and effective. Unions have legitimate interests in conserving resources by
20 avoiding unnecessary mailing expenses, and in ensuring the accuracy of employee contact
21 information. L-3, 355 NLRB No. 174 at 4; Cequent Towing, 357 NLRB No. 48 at 3. Moreover,
22 it is axiomatic that an in-person dialogue about contract rights, union benefits, and dues structure
23 – which allows the employee to ask questions and receive contemporaneous answers – is a much
24 more effective manner of conveying complicated information than simply mailing a packet of
25 documents, which busy individuals may or may not have an opportunity to read and
26 comprehend.

27 Finally, the in-person affiliation practice imposes only a minimal burden on the
28 represented employee. The employee is free to visit whichever of the Union’s two offices he

1 finds most convenient. (JX 1, Exh. 2 at 1-2) The Union typically provides the new hire a 4-
2 week window for affiliating (JX 1, Exh. 2 at 1), but makes accommodations for employees who,
3 for whatever reason, are unable to come to the Union's office in person within that period.
4 (Tr. 61-62, 88-89) Any minimal inconvenience to the employee from visiting to the Union's
5 office is outweighed by the benefits of receiving in-person, up-to-date information, taking care of
6 all union "business" in one fell swoop, and having one's questions about the contract, insurance,
7 dues and other matters promptly answered. Accordingly, the Union's in-person affiliation
8 practice serves a legitimate purpose and does not violate its duty of fair representaton.

9 **2. The Union Did Not Restrain, Threaten or Coerce Dion**

10 The General Counsel contends that the Union threatened, restrained and coerced Dion
11 and other unspecified employees in violation of Section 8(b)(1)(A) by "promulgating and
12 maintaining" an in-person affiliation "rule." (Complaint ¶¶ 11(e)) The General Counsel further
13 complains about the following Union statements to Dion: (1) its statement in the July 12, 2013
14 welcome letter that "All new hires are required to come into one of our offices to affiliate **in**
15 **person** with Local 135" (Complaint ¶ 11(b); (2) its remarks to Dion's mother on August 20 that
16 Dion had to come to the Union's office to affiliate in person (Id. ¶ 11(c)); and (3) its statement in
17 the August 22, 2013 letter that Dion "will need to come in and sign up as a Beck member and
18 relinquish your rights as a union member." (Id. ¶ 11(d); JX 1, Exh. 5)

19 The Union's foregoing actions do not violate Section 8(b)(1)(A). Section 8(b)(1)(A) is
20 "narrowly construed" so as not to reach internal union procedures, unless those procedures
21 "affect[] a member's employment status." Sandia Corp., 131 NLRB 1417, 1421 (2000); *see also*
22 UMC of Louisiana, 287 NLRB 545 (1987) (no violation of 8(b)(1)(A) where challenged union
23 policy had no effect on employment); NLRB v. Construction & General Laborers Union Local
24 534, 778 F.2d 284, 291 (6th Cir. 1985) (Section 8(b)(1) only prohibits "reprehensible" practices
25 such as "violence, intimidation, and reprisal or threats thereof"). In order for Union conduct to
26 be deemed coercive or threatening, it must involve some explicit or implicit threat of adverse
27 employment action. Sandia Corp., 131 NLRB at 1418-19; Writers Guild of America, 350 NLRB
28 393, 401-02 (2007)

1 Here, it is undisputed that the Union has neither threatened nor taken adverse
2 employment action against Dion or anyone else for failing to affiliate in person. (Tr. 61, 62, 75-
3 76, 97) The Union never communicated to Dion or his mother that Dion would be fired,
4 removed from the work schedule, or suffer any consequences whatsoever for failing to affiliate
5 in person. (Tr. 44, 84, 90-91)

6 **a. Union's Written Correspondence to Dion**

7 The Union's July 12, 2013 letter is neither threatening nor coercive, as it does not suggest
8 or imply that there will be adverse employment consequences for failing to affiliate in person.
9 (JX 1, Exh. 2 at 1) Existing Board law recognizes that it is not threatening for a Union to instruct
10 a new hire to come to its office for administrative purposes, such as establishing contact with the
11 Union. In Sav-On Drugs, a union representative, attempting to persuade a new employee to sign
12 a union authorization card at the employee's work site, "told him that by signing the card he
13 would save himself a trip downtown to the Union's office." The Board found that this statement
14 did "not remotely imply a threat...that [the employee] would suffer a loss of employment; thus,
15 it is not violative of Section 8(b)(1)(A)." Sav-On Drugs, 227 NLRB 1638, 1645 (1977).

16 Similarly, the Union's August 22, 2013 letter contains no threats. (JX 1, Exh. 5) In that
17 letter, the Union acknowledged Dion's request for reduced dues and notified Dion of his new
18 dues rate. Thus, Dion could not have reasonably construed this letter as a refusal to reduce his
19 dues unless he affiliated in person. Moreover, the letter mentions neither his employment nor the
20 union security clause, so the letter could not be reasonably interpreted as a threat to his
21 employment.

22 An analysis of the Union's August 16, 2013 delinquency letter confirms that the Union
23 was not attempting to mislead Dion into believing that in-person affiliation was required for his
24 employment with Ralphs. In that letter, the Union notified Dion that it would enforce the union
25 security clause against him only if he failed to fulfill his financial obligations to the Union.
26 (JX 1, Exh. 3 ¶¶ 1-2) The letter carefully distinguished between Dion's financial obligations,
27 which are subject to the union security clause, and the Union's in-person affiliation practice,
28 which is not. On the subject of in-person affiliation, the letter says:

1 We understand that this may be your first experience with a labor union and we
2 would love the opportunity to explain the benefits of being a Union member. We
look forward to seeing you at one of our offices to begin your membership.

3 (JX 1, Exh. 3, ¶ 3) This is hardly the language of an organization that is trying to mislead people
4 into thinking in-person affiliation is required by the union security clause. The Union's written
5 statements about in-person affiliation constitute lawful "peaceful persuasion," not coercion or
6 threats. Laborers Local 534, 778 F.2d at 291.

7 **b. Alleged Statements to Dion's Mother**

8 The General Counsel further alleges that the Union threatened Dion by telling Dion's
9 mother that Dion had to come to the Union's office to register a Beck objection. (Compl.

10 ¶ 11(c)) This portion of the charge is must be dismissed for several reasons.

11 First of all, neither the General Counsel nor the Charging Party established that the
12 Union's alleged statements to Dion's mother violated any duty the Union owed *to Dion*. Dion –
13 not his mother -- is the person to whom the Union owes a duty of fair representation. (Tr. 30-31)
14 Therefore, absent some evidence that Dion was aware of or felt threatened by the Union's
15 alleged remarks to his mother, the conversations between the Union and Dion's mother are
16 wholly irrelevant to the question of whether the Union breached a duty to Dion.

17 The Union was not obligated to recognize Dion's mother as his proxy on matters of
18 conscience relating to Union membership. Minors who work in union jobs are "substantially
19 concerned with the hours, wages, and working conditions of the employees in the unit and are
20 entitled to express their desires with regard to representation." E.J. Kelley Co., 98 NLRB 486,
21 487-88 (1952); *see also Johnson v. City of Opelousas*, 658 F.2d 1065, 1072 (minors have
22 constitutional right to associate freely for political, social, legal and economic purposes).

23 Therefore, Dion and his mother cannot be treated as one person for purposes of this
24 charge. Rather, in order for the Union's remarks to Dion's mother to be relevant, the General
25 Counsel and Charging Party had to demonstrate, at minimum, that the alleged threats were
26 conveyed to Dion. Because they did not, the allegations based on the Union's conversations
27 with his mother must be dismissed.

28 //

1 Second, even if the Union's remarks to Dion's mother are relevant, none of those remarks
2 were threatening or coercive. Miller, Bensinger, and Hackworth advised Dion's mother that he
3 needed to come to the Union office to affiliate in person, in accordance with the Union's
4 standard procedure. (Tr. 84; RX 1) These remarks were not threatening because they carried no
5 suggestion of adverse job action. Nobody suggested to Dion's mother that Dion would be fired
6 or removed from the work schedule if he declined to affiliate in person. (Tr. 44, 90-91)

7 Bensinger credibly testified, consistent with her contemporaneous notes, that she
8 informed Dion's mother of his right to affiliate as a non-member. (Tr. 83; RX 1 at 1) She
9 expressly denied suggesting (as Dion's mother alleged) that Dion was required to join the Union
10 as a full member (Tr. 84).

11 Similarly, Hackworth's remarks to Dion's mother were not threatening. Hackworth
12 credibly testified that during her brief phone call with Dion's mother, she attempted to explain
13 some of the Union's reasons for instructing new-hires to affiliate in person – i.e., to fill out
14 paperwork and obtain information about health insurance. Hackworth's comments can be
15 characterized, at most, as “peaceful persuasion” authorized by Section 8(b)(1)(A). Laborers
16 Local 534, 778 F.2d at 291; *see also* Writers Guild, 350 NLRB at 401-02 (union remarks to
17 members were not implicitly threatening where union speaker never mentioned discipline or
18 adverse consequences for failing to comply with union's requests).

19 To the extent the Union witnesses' testimony about the substance of the phone calls
20 differs from that of Dion's mom, the Union witnesses' testimony should be credited. At the time
21 the Union witnesses spoke to Dion's mother, they made contemporaneous notes memorializing
22 the conversations, which they entered into the Union's computerized records, consistent with the
23 Union's regular business practice. (Tr. 56, 71-73, 81-82, 83, 84-85; RX 1) Accordingly, their
24 notes are admissible for the truth thereof under Federal Rules of Evidence 803(5) and (6).⁴
25 NLRB Rules & Reg. Sec. 102.39. The Union witnesses' testimony describing the telephone
26 calls was consistent with their notes.

27 ⁴ Moreover, the Union's records on Dion (RX 1) are admissible under Rule 805(7) as
28 proof that Dion's mother either did not call the Union in July 2013 as she claims, or failed to
disclose on whose behalf she was calling. (Tr. 41, 82; RX 1)

1 Dion's mom's testimony about these calls not reliable for several reasons. First, she
2 claimed she did not understand some of the key words and phrases Union officials used during
3 these phone calls. When asked if anyone had mentioned Dion's right to "affiliate as a non-
4 member," she contended she did not understand the meaning of the words "affiliate" or "non-
5 member." (Tr. 43-46) Thus, when Bensinger said Dion needed to "affiliate as a non-member,"
6 Dion's mom misunderstood this to mean full membership was required. Similarly, when asked
7 if anyone from the Union mentioned "Beck" status, Dion's mom admitted that if they had, she
8 would not have understood what it meant. (Tr. 46) Her professed lack of comprehension makes
9 it likely that she remembered and interpreted the Union's remarks inaccurately.

10 Moreover, Dion's mother testified evasively on the subject of non-member status. When
11 first asked if Bensinger mentioned "non-member status" during the August 20 phone call, Dion's
12 mother claimed she couldn't recall. (Tr. 43) Then, when asked the same question regarding
13 Hackworth, she claimed she did not understand the question: "I'm not sure I completely
14 understand your question, so can you give me a little more explanation of what you're asking?
15 What do you mean was there a discussion of non-member status?" (Tr. 44-45). When the
16 question was further clarified, she responded: "At any point did they say anything about him
17 being a non-member, it's just hard for me to answer that question without more clear specifics
18 about what you are asking me..." (Tr. 45-46) Finally, when counsel rephrased the question a
19 fourth time, she again contended she could not remember. (Tr. 46)

20 The question posed was explicit and straightforward: Did the Union officers she spoke to
21 mention Dion's right to be a "non-member"? As an intelligent and articulate witness, her
22 representations that she did not understand this simple question strain credulity. The more likely
23 scenario is that she was attempting to evade the question without perjuring herself, and finally
24 decided to stick with her original contention that she could not recall, because that is impossible
25 to disprove. Her willingness to testify evasively on a factual matter detrimental to her theory of
26 the case should cause the ALJ to evaluate the entirety of her testimony with skepticism.

1 **B. The Allegations Regarding the Union's Alleged Failure to Provide Dion a**
2 **Breakdown of Its Expenses Must Be Dismissed**

3 The General Counsel alleges that “[s]ince about August 19, 2013, Respondent has failed
4 to provide Dion with a detailed apportionment of its expenditures for representational
5 activities...” (Compl. ¶ 10(c)) Significantly, however, neither the General Counsel nor the
6 Charging Party presented any evidence at the hearing in support of this allegation. There is zero
7 evidence in the record that the Union, in fact, failed to provide Dion the described information.

8 The only references in the record to this subject are counsels’ remarks regarding the
9 Union’s motion to dismiss Paragraph 10(c) of the Complaint. (Tr. 17-18) As Charging Party’s
10 counsel pointed out, however, attorneys’ remarks are not evidence. (Tr. 18) Therefore,
11 Paragraphs 10(c) and (d) of the Complaint must be dismissed, based on the complete lack of
12 evidence in the record to support the allegations therein.

13 In addition, the entirety of Paragraph 10 must be dismissed on the merits. Even assuming
14 for the sake of argument that the Union failed to provide the described information to Dion –
15 which the Union disputes – the General Counsel and Charging Party have not demonstrated that
16 the Union was obligated to provide it.

17 Once again, the applicable standard for evaluating the Union’s alleged failure to provide
18 Dion financial information under California Saw is whether the Union breached its duty of fair
19 representation – i.e., whether “in light of the factual and legal landscape...the union’s behavior is
20 so far outside a wide range of reasonableness as to be irrational.” Kroger Limited Partnership,
21 361 NLRB No. 39 at 5-6 (2014).

22 Under established Board law, a union need not provide a represented employee detailed
23 financial information about its expenditures “until [the] employee elects nonmember status *and*
24 *then takes the additional step of objecting to paying for non-representational expenses.*” Kroger,
25 361 NLRB No. 39 at 1 (emphasis added) In Kroger, the Board highlighted the distinction
26 between nonmembers and objectors, explaining that not all nonmembers are objectors. Id. at 4
27 n.25 (“employee may choose from among three relationships with a union: member,
28 nonmember, or nonmember objector”) and 6 (“union is required to inform only objectors, not

1 nonmembers in general, of the percentage by which dues and fees are reduced for objectors”).
2 Only those nonmembers who take the additional step of objecting to financing the Union’s non-
3 representational activities are entitled to the Union’s detailed financial information. Id. at 1.

4 Here, the General Counsel and Charging Party presented no evidence that Dion objected
5 to paying for the Union’s non-representational expenses. In his August 20, 2013 letter, Dion
6 declined Union membership and requested reduced dues, but did not object to paying for the
7 Union’s non-representational expenses. To the contrary, Dion asserted that he wanted to join the
8 Union in the future and characterized his decision to decline membership as a cost-saving
9 measure while he was a part-time employee in high school. (JX 1, Exh. 4)

10 Beck objections “usually turn on ideological concerns” and are “grounded in the notion
11 that an employee [must decide] whether her political beliefs are compromised by paying full fees
12 and dues to the union, which absent an objection, may expend those funds on causes with which
13 the employee disagrees.” Kroger, 361 NLRB No. 39 at 7. Dion’s letter was not a Beck
14 objection triggering the Union’s legal obligation to provide financial disclosures, because the
15 letter did not suggest in any way, shape or form, that Dion was politically or ideologically
16 opposed to funding the Union’s nonrepresentational activities. To the contrary, by asserting he
17 wanted to join the Union in the future, Dion implicitly expressed support for the Union’s
18 nonrepresentational activities.

19 The Union fulfilled its duty of fair representation to Dion by providing him the
20 information he requested. His letter, quite simply, said: “Please let me know about the reduced
21 fee for non-members.” (JX 1, Exh. 4) The Union promptly complied by sending him a letter
22 specifying the reduced dues rate for his job classification. (JX 1, Exh. 5) In light of his failure to
23 object, no further information was required. The Union’s response was entirely reasonable in
24 light of existing law, therefore the Union did not breach its duty of fair representation to Dion.

25 Further, the General Counsel and Charging Party cannot show that the Union breached its
26 duty to Dion based on conversations with his mother. Even if Dion’s mother requested a
27 breakdown the Union’s expenses during one of her telephone calls (which she did not), there is
28 absolutely no legal authority which compels the Union to take direction from Dion’s mother. As

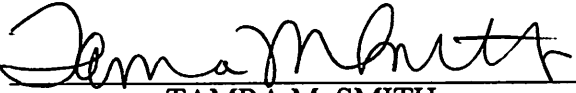
1 discussed above, it was Dion's choice whether to join the Union and object to paying for
2 nonrepresentational expenses – not his mother's. E.J. Kelley Co., 98 NLRB 486, 487-88 (1952);
3 Johnson v. City of Opelousas, 658 F.2d 1065, 1072. The Union was not required to recognize
4 his mother's attempts to make these decisions for him, or to presume, absent some confirmation
5 from him, that she was accurately communicating his choices.

6 **CONCLUSION**

7 For the reasons stated herein, the Union respectfully requests that the Complaint be
8 dismissed in its entirety.

9
10 DATED: January 13, 2015

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GABRIELA PONCE certifies as follows:

On January 13, 2015, I caused the transmission of the document(s) described as

X **BY E-MAIL:** By transmitting a copy of the above-described document(s) via e-mail to the individual(s) set forth above at the e-mail addressed indicated.

Robert MacKay
e-mail: Robert.MacKay@nlrb.gov

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on January 13, 2015, at Los Angeles, California.

Gabriela Ponce
GABRIELA PONCE